

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a  
Delaware corporation,

Defendant.

No. 2:07-cv-936RSM

**DECLARATION OF WENDY E. LYON  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON BREACH OF  
CONTRACT**

Noted for Consideration: July 18, 2008  
Oral Argument Requested

In accordance with Federal Rule of Civil Procedure 26(a)(1), Plaintiff Microsoft Corporation ("Microsoft") makes the following initial disclosures:

1. I am one of the attorneys in the law firm of Riddell Williams, P.S., counsel for Plaintiff Microsoft in this case. I make this declaration based on personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of the Agreement between Sony Computer Entertainment America Inc. and Sony Computer Entertainment Inc. and Immersion Corporation ("Immersion"), executed on or about March 1, 2007. Liu MS Dep.

Ex. 1 [FILED UNDER SEAL]

DECL. OF LYON IN SUPPORT OF PLNTF'S MOT. FOR PART. SUMM.  
JUDGMNT ON BREACH OF CONTRACT (No. 2:07-CV-936RSM)- 1  
4845-2108-5442.02  
062608/1253/20363.00411

Riddell Williams P.S.  
1001 FOURTH AVENUE  
SUITE 4500  
SEATTLE, WA 98154-1192  
206.624.3600

1           3.       Attached as Exhibit 2 is a true and correct copy of Sublicense Agreement  
2 between Microsoft and Immersion dated July 25, 2003. Peter Dep. Ex. 43. **[FILED**  
3 **UNDER SEAL]**

4           4.       Attached as Exhibit 3 is a true and correct copy of a page from Immersion's  
5 website, entitled "Adding the sense of touch to a digital world."

6           5.       Attached as Exhibit 4 is a true and correct copy of the Complaint for Patent  
7 Infringement filed by Immersion in the United States District Court, Northern District of  
8 California, C02-00710CW, on February 11, 2002.

9           6.       Attached as Exhibit 5 is a true and correct copy of the Settlement  
10 Agreement and Mutual Release between Microsoft and Immersion, dated July 25, 2003.  
11 Reutens Dep. Ex. 47.

12           7.       Attached as Exhibit 6 is a true and correct copy of the License Agreement  
13 between Microsoft dated July 25, 2003. Reutens Dep. Ex. 46 **[FILED UNDER SEAL]**

14           8.       Attached as Exhibit 7 is a true and correct copy of Senior Redeemable  
15 Convertible Debenture Purchase Agreement between Microsoft and Immersion dated July  
16 25, 2003. Reutens Dep. Ex. 49 **[FILED UNDER SEAL]**

17           9.       Attached as Exhibit 8 is a true and correct copy of Series A Redeemable  
18 Convertible Preferred Stock Purchase Agreement between Immersion and Microsoft dated  
19 July 25, 2003. Reutens Dep. Ex. 48 **[FILED UNDER SEAL]**

20           10.      Attached as Exhibit 9 is a true and correct copy of a January 6, 2007 letter  
21 from Stephen Ambler, CFO of Immersion, to David Edgar of the United States Securities  
22 and Exchange Commission ("SEC"). Ambler Dep. Ex. 138.

23           11.      Attached as Exhibit 10 is a true and correct copy of excerpts of Immersion's  
24 SEC filing Form 10-Q for the quarterly period ending March 31, 2003. Reutens Dep. Ex.  
25 53.

1           12.     Attached as Exhibit 11 is a true and correct copy of excerpts of Immersion's  
2 SEC filing Form 10-Q for the quarterly period ending March 31, 2004. Reuters Dep. Ex.  
3 60.

4           13.     Attached as Exhibit 12 is a true and correct copy of excerpts of Immersion's  
5 SEC filing Form 10-Q for the quarterly period ending September 30, 2005. Peter Dep. Ex.  
6 42.

7           14.     Attached as Exhibit 13 is a true and correct copy of excerpts of Immersion's  
8 SEC filing Form 10-K for the fiscal year ending December 31, 2005. Peter Dep. Ex. 41.  
9 Peter Dep. Ex. 41.

10          15.     Attached as Exhibit 14 is a true and correct copy of excerpts of Immersion's  
11 SEC filing Form 10-Q for the quarterly period ending March 31, 2006. Ambler Dep. Ex.  
12 134.

13          16.     Attached as Exhibit 15 is a true and correct copy of excerpts of Immersion's  
14 SEC filing Form 10-Q for the quarterly period ending June 30, 2006. Ambler Dep. Ex.  
15 135.

16          17.     Attached as Exhibit 16 is a true and correct copy of excerpts of Immersion's  
17 SEC filing Form 10-Q for the quarterly period ending September 30, 2006. Ambler Dep.  
18 Ex. 136.

19          18.     Attached as Exhibit 17 is a true and correct copy of excerpts of Immersion's  
20 SEC filing Form 8-K dated September 22, 2004.

21          19.     Attached as Exhibit 18 is a true and correct copy of a January 23, 2007 letter  
22 from Stephen Ambler, CFO of Immersion, to Brad Skinner of the SEC. Ambler Dep. Ex.

23 140. **[FILED UNDER SEAL]**

24          20.     Attached as Exhibit 19 is a true and correct copy of two July 29, 2003  
25 Reuters news articles regarding Immersion's stock price. Reuters Dep. Ex. 58. **[FILED**  
26 **UNDER SEAL]**

1           21.     Attached as Exhibit 20 is a true and correct copy of a March 28, 2005 article  
2 from the [www.Forbes.com](http://www.Forbes.com) website entitled "Sony's Loss May Benefit Microsoft." Viegas  
3 Dep. Ex. 95.

4           22.     Attached as Exhibit 21 is a true and correct copy of the Jury Verdict in  
5 *Immersion v. Sony* filed on September 21, 2004. Liu IM Dep. Ex. 1. **[FILED UNDER**  
6 **SEAL]**

7           23.     Attached as Exhibit 22 is a true and correct copy of the Amended Judgment  
8 in *Immersion v. Sony* entered on April 7, 2005. Liu. MS Dep. Ex. 15.

9           24.     Attached as Exhibit 23 is a true and correct copy of a March 14, 2007 email  
10 from Daniel Herp, Corporate Counsel for Sony Computer Entertainment America Inc.,  
11 attaching the Agreement and Escrow Instructions regarding disbursement of the funds in  
12 the Immersion litigation escrow account, including Exhibit A, orders dismissing  
13 Immersion's appeals in the U.S. Court of Appeals, and Exhibit B, Notice of Satisfaction of  
14 Final Judgment. **[FILED UNDER SEAL]**

15           25.     Attached as Exhibit 24 is a true and correct copy of the Order Entering  
16 Permanent Injunction in *Immersion v. Sony* dated March 24, 2005. Liu MS Dep. Ex. 17.

17           26.     Attached as Exhibit 25 is a true and correct copy of the Order Denying  
18 Parties' Motions for Judgment as a Matter of Law and Addressing Other Matters in  
19 *Immersion v. Sony*, entered January 10, 2005. Birnholz Dep. Ex. 123.

20           27.     Attached as Exhibit 26 is a true and correct copy of excerpts of Immersion's  
21 Responses to Microsoft's First Set of Interrogatories and Requests for Production of  
22 Documents.

23           28.     Attached as Exhibit 27 are true and correct copies of Sony's Notice of  
24 Appeal dated February 9, 2005, Amended Notice of Appeal dated February 10, 2005, and  
25 Notice of Appeal dated June 16, 2005.  
26

1           29.     Attached as Exhibit 28 is a true and correct copy of a March 18, 2005 email  
2 from Shoichi Endo to Victor Viegas reciting 3/18/05 Meeting Minutes. Endo Dep. Ex. 61.

3 **[FILED UNDER SEAL]**

4           30.     Attached as Exhibit 29 is a true and correct copy of a December 9, 2005  
5 email from Shoichi Endo to Victor Viegas. Endo Dep. Ex. 63. **[FILED UNDER SEAL]**

6           31.     Attached as Exhibit 30 is a true and correct copy of a November 22, 2006  
7 email from Victor Viegas of Immersion to the Immersion Board of Directors. Endo Dep.  
8 Ex. 72. **[FILED UNDER SEAL]**

9           32.     Attached as Exhibit 31 is a true and correct copy of a Confidential  
10 Settlement Communication dated October 26, 2006 from Immersion. Endo Dep. Ex. 68.  
11 **[FILED UNDER SEAL]**

12           33.     Attached as Exhibit 32 is a true and correct copy of a Confidential  
13 Settlement Communication dated December 13, 2006 from Immersion. Liu MS Dep. Ex.  
14 2. **[FILED UNDER SEAL]**

15           34.     Attached as Exhibit 33 is a true and correct copy of a Confidential  
16 Settlement Communication dated January 30, 2007 from Sony. Liu MS Dep. Ex. 3.  
17 **[FILED UNDER SEAL]**

18           35.     Attached as Exhibit 34 is a true and correct copy of a February 7, 2007  
19 email from Shinji Ina to Shoichi Endo, with translation. Endo Dep. Ex. 79. **[FILED**  
20 **UNDER SEAL]**

21           36.     Attached as Exhibit 35 is a true and correct copy of a February 15, 2007  
22 email from Shinji Ina to Shoichi Endo, with translation. Endo Dep. Ex. 84. **[FILED**  
23 **UNDER SEAL]**

24           37.     Attached as Exhibit 36 are true and correct copies of emails dated February  
25 20 and February 21, 2007 between Laura Peter to Jennifer Liu. Liu MS Dep. Ex. 6.  
26 **[FILED UNDER SEAL]**

1           38.     Attached as Exhibit 37 are true and correct copies of drafts of the  
2 Sony/Immersion Agreement, dated 7/20/07, 2/22/07, and 2/27/07. **[FILED UNDER**  
3 **SEAL]**

4           39.     Attached as Exhibit 38 is a true and correct copy of an October 2, 2007  
5 email from Jennifer Liu (Sony in-house counsel) to Wendy Lyon (Microsoft outside  
6 counsel).

7           40.     Attached as Exhibit 39 is a true and correct copy of the Stipulation and  
8 Order Dissolving the Permanent Injunction filed March 16, 2007, and entered March 19,  
9 2007. Liu MS> Dep. Ex. 24. **[FILED UNDER SEAL]**

10          41.     Attached as Exhibit 40 is a true and correct copy of a March 2, 2007 email  
11 from Kay Wylie at Finnegan law firm to Jennifer Liu at Sony (and others) attaching the  
12 Notice of Withdrawal of Appeals and Consented Motion to Dismiss dated March 1, 2007.  
13 Lui MS Dep. Ex. 20.

14          42.     Attached as Exhibit 41 is a true and correct copy of a February 25, 2007  
15 email from Richard Birnholz, Immersion counsel, to Larry O'Rourke at Finnegan attaching  
16 draft escrow instructions, draft Notice of Withdrawal of Appeals and Consented to Motion  
17 to Dismiss, Proposed Order Granting Consented to Motion to Dismiss, Notice of  
18 Satisfaction of Final Judgment, and Stipulation and Proposed Order dissolving permanent  
19 injunction. Birnholz Dep. Ex 117. **[FILED UNDER SEAL]**

20          43.     Attached as Exhibit 42 is a true and correct copy of a March 1, 2007 email  
21 from Richard Birnholz to Laura Peter of Immersion regarding the Stipulation to Dissolve  
22 Injunction. **[FILED UNDER SEAL]**

23          44.     Attached as Exhibit 43 are true and correct copies of March 1, 2007 and  
24 March 13, 2007 emails between Jennifer Liu and Laura Peter. Liu MS Dep. Ex. 23.  
25 **[FILED UNDER SEAL]**

1           45.     Attached as Exhibit 44 are true and correct copies of February 27, 2007 and  
2     March 1, 2007 emails from Laura Peter and Jennifer Liu relating to dismissal of appeals.  
3     Peter Dep. Ex. 35 and Birnholz Dep. Ex. 124. **[FILED UNDER SEAL]**

4           46.     Attached as Exhibit 45 are true and correct copies of the Orders dismissing  
5     Sony's appeals, dated March 8, 2007 and March 14, 2007. Liu MS> Dep. Ex. 21. **[FILED**  
6     **UNDER SEAL]**

7           47.     Attached as Exhibit 46 is a true and correct copy of a March 16, 2007 email  
8     from Richard Birnholz to Doug Lumish regarding filing the Stipulation to Dissolve the  
9     Permanent Injunction. **[FILED UNDER SEAL]**

10          48.     Attached as Exhibit 47 is a true and correct copy of a March 16, 2007 email  
11     showing wire transfer payment of over \$97 million to Immersion from Sony. **[FILED**  
12     **UNDER SEAL]**

13          49.     Attached as Exhibit 48 is a true and correct copy of the Notice of  
14     Satisfaction of Judgment filed March 19, 2007. Lui MS Dep. Ex. 16. **[FILED UNDER**  
15     **SEAL]**

16          50.     Attached as Exhibit 49 is a true and correct copy of a February 23, 2007  
17     email from Shinji Ina to Shoichi Endo, with translation. Endo Dep. Ex. 85. **[FILED**  
18     **UNDER SEAL]**

19          51.     Attached as Exhibit 50 is a true and correct copy of a March 5, 2007 email  
20     chain between Jennifer Liu and Laura Peter. Liu MS Dep. Ex. 26. **[FILED UNDER**  
21     **SEAL]**

22          52.     Attached as Exhibit 51 is a compilation of dictionary definitions of the  
23     terms: "Settle," "Settlement," and "Agreement."

24          53.     Attached as Exhibit 52 are true and correct copies of printouts from the U.S.  
25     Patent Office's website regarding patent number 6275213 dated 8/14/2001 and patent  
26     number 6424333 dated 7/23/2002.

1           54.     Attached as Exhibit 53 are true and correct copies of (1) Minute Order from  
2 the U.S. District Court entered May 17, 2005; and (2) Order Granting Stipulated Request  
3 for an Order Authorizing Withdrawal of Funds from the Court's Registry for Creation of  
4 an Escrow Account, entered June 12, 2006.

5           55.     Attached as Exhibit 54 is a true and correct copy of excerpts of Sony's  
6 Motion for Reconsideration of Two Rulings in the Court's January 10, 2005 Order  
7 Denying Parties Motions for Judgment as a Matter of Law and Addressing Other Matters,  
8 filed January 24, 2005.

9           56.     Attached as Exhibit 55 is a true and correct copy of excerpts of Immersion's  
10 Motion for Attorneys Fees Pursuant to Section 285 and F.R.C.P. 37(c)(2). Birnholz Dep.  
11 Ex. 100.

12           57.     Attached as Exhibit 56 is a true and correct copy of a July 20, 2003 email  
13 from Victor Viegas to staff at Immersion forwarding an article about the Microsoft  
14 Settlement entitled "Microsoft Licenses Immersion's Haptic Patent Portfolio." Viegas  
15 Dep. Ex. 93. **[FILED UNDER SEAL]**

16           58.     Attached as Exhibit 57 is a true and correct copy of Immersion  
17 Corporation's SEC Form 8-K, dated July 28, 2003. Reutens Dep. Ex. 59.

18           59.     Attached as Exhibit 58 is a true and correct copy of a July 25, 2003 email  
19 from Victor Viegas to Microsoft and Preston Gates personnel regarding "hosting a  
20 celebration dinner sometime in the near future." **[FILED UNDER SEAL]**

21           60.     Attached as Exhibit 59 are true and correct copies of (1) a February 18,  
22 2003 email from Patrick Reutens of Immersion to Linda Allen at Irell & Manella  
23 confirming in-house counsel attendees for Feb. 4<sup>th</sup> Mediation, (2) A July 30, 2003 email  
24 from Patrick Reutens to Daniel Bergeson; and (3) a July 25, 2003 opinion letter from the  
25 Gray Cary firm to Microsoft re issuance of shares, sale of debentures. Reutens Dep. Exs.  
26 44 and 45; Birnholz Dep. Ex. 111. **[FILED UNDER SEAL]**



1           61.     Attached as Exhibit 60 are true and correct copies of (1) emails between  
2     Immersion in-house and outside counsel attaching drafts of the Microsoft Settlement  
3     documents, and (2) emails between Immersion and Microsoft, exchanging drafts of the  
4     Microsoft Settlement documents. Birnholz Exs. 102-110; Brown Dep. Exs. 34, 35, 45, 46;  
5     Lustig Dep. Exs. 65-68; Spector Dep. Ex. 52-55. **[FILED UNDER SEAL]**

6           62.     Attached as Exhibit 61 is a true and correct copy of a July 5, 2003 email  
7     from Marc Brown to Patrick Reutens enclosing Litigation Payout Analysis. **[FILED**  
8     **UNDER SEAL]**

9           63.     Attached as Exhibit 62 are true and correct copies of excerpts of the  
10    deposition of Victor Viegas taken on May 22, 2008. **[FILED UNDER SEAL]**

11          64.     Attached as Exhibit 63 are true and correct copies of excerpts of the  
12    deposition of Patrick Reutens taken on March 24, 2008. **[FILED UNDER SEAL]**

13          65.     Attached as Exhibit 64 are true and correct copies of excerpts of the  
14    deposition of Laura Peter taken on March 21, 2008. **[FILED UNDER SEAL]**

15          66.     Attached as Exhibit 65 are true and correct copies of excerpts of the  
16    deposition of Shoichi Endo taken on March 26, 2008. **[FILED UNDER SEAL]**

17          67.     Attached as Exhibit 66 are true and correct copies of excerpts of the  
18    deposition of Stephen Ambler taken on June 12, 2008. **[FILED UNDER SEAL]**

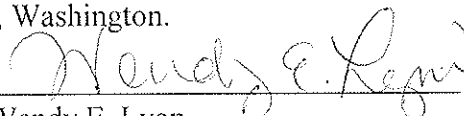
19          68.     Attached as Exhibit 67 are true and correct copies of excerpts of the  
20    deposition of Jennifer Liu taken on December 20, 2007[Vol. 1] and/or January 23, 2008  
21    [Vol. 2]. **[FILED UNDER SEAL]**

22          69.     Attached as Exhibit 68 are true and correct copies of excerpts of the  
23    deposition of Alan Gordon taken on June 11, 2008. **[FILED UNDER SEAL]**

24          70.     Attached as Exhibit 69 are true and correct copies of excerpts of the  
25    deposition of Richard Birnholz taken on June 5, 2008. **[FILED UNDER SEAL]**  
26

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 Executed on June 26, 2008 at Seattle, Washington.

4   
5 Wendy E. Lyon

6 **CERTIFICATE OF SERVICE**

7 I, Margaret R. Friedmann, declare as follows:

8 I am over 18 years of age and a citizen of the United States. I am employed as a  
9 legal secretary by the law firm of Riddell Williams P.S.

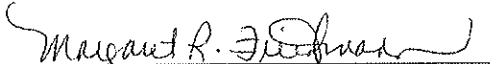
10 On the date noted below I electronically filed the foregoing document titled  
11 **PLAINTIFF'S MOTION TO FILE EXHIBITS UNDER SEAL**, with an attached  
12 **[PROPOSED] ORDER GRANTING PLAINTIFF MOTION TO FILE EXHIBITS**  
13 **UNDER SEAL** with the Clerk of the Court using the CM/ECF system which will send  
14 notification of such filing to the following counsel for Immersion Corporation:

15 Bradley S. Keller  
16 Jofrey M. McWilliam  
17 Email: [bkeller@byrneskeller.com](mailto:bkeller@byrneskeller.com)  
18 [jmcwilliam@byrneskeller.com](mailto:jmcwilliam@byrneskeller.com)

Richard M. Birnholz  
Morgan Chu  
Alan J. Heinrich  
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[aheinrich@irell.com](mailto:aheinrich@irell.com)  
[dkaplan@irell.com](mailto:dkaplan@irell.com)

19 I declare under penalty of perjury under the laws of the State of Washington that the  
20 foregoing is true and correct.

21 Executed at Seattle, Washington this 26<sup>th</sup> day of June, 2008.

22   
23 Margaret R. Friedmann  
24 Legal Secretary, Riddell Williams P.S.  
25 1001 Fourth Avenue, Suite 4500  
26 Seattle, WA 98154  
Phone: (206) 624-3600  
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